

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

UNITED STATES OF AMERICA,) CRIMINAL
) NO. TDC-14-529-1
Plaintiff,)
)
v.)
)
VADIM MIKERIN,)
)
Defendant.)

TRANSCRIPT OF SENTENCING PROCEEDINGS
BEFORE THE HONORABLE THEODORE D. CHUANG
UNITED STATES DISTRICT JUDGE
TUESDAY, DECEMBER 15, 2015; 10:17 A.M.
GREENBELT, MARYLAND

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-and-

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COMPUTER-AIDED TRANSCRIPTION OF STENOTYPE NOTES

1 THE COURT: Good morning. Please be seated.

2 (Counsel reply, "Good morning, Your Honor.")

3 THE DEPUTY CLERK: The matter now pending
4 before the Court is criminal matter TDC-14-529, the
5 *United States of America vs. Vadim Mikerin*.

6 The matter now comes before the Court for the
7 purpose of a sentencing.

8 Will counsel please state your names for the
9 record, starting with the government.

10 MR. WERNICK: Good morning, Your Honor.
11 Ephraim Wernick from the Department of Justice on behalf
12 of the United States.

13 Seated with me at counsel table, Michael Packard,
14 an Assistant U.S. Attorney here in Maryland, Jennifer
15 Kibier, an FBI Special Agent, Megan Leibold, a Special
16 Assistant U.S. Attorney in Maryland, Chris Cestaro, who
17 is also a trial attorney with the Department of Justice,
18 and David Salem, an Assistant U.S. Attorney in Maryland.

19 THE COURT: Okay. And the defense?

20 MR. LOPEZ: Good morning, Your Honor. Jonathan
21 Lopez on behalf of Vadim Mikerin from Orrick Herrington,
22 and with me is my colleague, William Jacobson.

23 We also have an interpreter here, and the defendant
24 is to the right of me and is present.

25 THE COURT: Okay. Let's start by swearing in

1 the interpreter.

2 ROMAN VOLSKY, INTERPRETER, SWORN

3 THE DEPUTY CLERK: Thank you. Please state
4 your full name for the record.

5 THE INTERPRETER: Roman Volsky; "V," as in
6 "Victor," O-L-S-K-Y.

7 THE DEPUTY CLERK: Thank you.

8 THE INTERPRETER: You're welcome.

9 THE COURT: Thank you. We are here for the
10 sentencing in United States vs. Mikerin.

11 On August 31st, 2015, Mr. Mikerin pleaded guilty to
12 conspiracy to commit money laundering in violation of
13 18, U.S.C., Section 371.

14 I have received and reviewed the following
15 documents in connection with today's proceeding: First,
16 the revised presentence report dated November 3rd, 2015;
17 the government's sentencing memorandum, with
18 attachments, dated December 1st, 2015; the defendant's
19 sentencing memorandum, with attachments, dated December
20 1st, 2015; the defendant's response to the government's
21 sentencing memorandum, with additional attachments,
22 dated December 8th, 2015.

23 I also have the consent order of forfeiture, which
24 I signed on December 3rd. I also received a, just
25 recently, a letter dated December 9th from Mr. Schamoler

1 (phonetic).

2 Are there any other materials that I have been
3 given or that I should be considering other than the
4 ones I have already mentioned?

5 MR. WERNICK: Your Honor, it just came to my
6 attention this morning from Ms. Carter, the presentence
7 report author, that there is an addendum on page 14 with
8 some modest changes.

9 THE COURT: Yes. I did receive that. There is
10 a change to the guideline provision range for the fine
11 in paragraph 68. I have that as well.

12 MR. WERNICK: Aside from that, nothing else
13 from the government.

14 THE COURT: Thank you.

15 MR. LOPEZ: Nothing else from the defense
16 either, Your Honor.

17 THE COURT: Okay. So, Mr. Lopez, have you and
18 your client had the opportunity to read and review the
19 presentence report?

20 MR. LOPEZ: Yes, Your Honor.

21 THE COURT: And I believe that all of the
22 parties' objections were addressed and resolved with the
23 exception of the defense objection to paragraph 31. Is
24 that correct?

25 MR. LOPEZ: That's correct, Your Honor. Role

1 is the only outstanding issue.

2 There is one other correction the defense would
3 like to make, and that's to the defendant's father's
4 age, his father's age. His age is actually 87, and he
5 will be turning 88 in two weeks. But I think the PSR
6 says 86 and our papers might say 89, but the actual age
7 is 87; in two weeks, 88.

8 THE COURT: Thank you.

9 So, I think we should discuss first the objection
10 to paragraph 31, which provides for a four-level
11 enhancement based on the finding that the defendant was
12 an organizer or a leader of criminal activity involving
13 four or more participants under Guideline 3B1.1(a).

14 I know the parties have briefed this, but I will
15 hear from both sides on that issue.

16 Mr. Lopez, do you want to elaborate at all?

17 MR. LOPEZ: Yes. Thank you, Your Honor. Thank
18 you for that opportunity.

19 The actions here show that Mr. Mikerin was involved
20 in illegal transactions under U.S. law. No one is
21 disputing that. That's why we are here.

22 A role enhancement, however, is not appropriate.
23 Everyone in this transaction had their own equal role to
24 play, if you will, and if anyone was a leader, it was
25 Rod Fisk. My client didn't organize or direct anybody

1 to do anything. The key component in a role analysis
2 is: What is the control of other people? And the folks
3 involved in this, Daren Condrey, Boris Rubizhevsky, Rod
4 Fisk, they are all sophisticated grown-ups and did
5 plenty of actions on their own voluntarily to get the
6 results that they were seeking. This is all laid out in
7 the Statement of Facts.

8 Boris Rubizhevsky created sham contracts, act as a
9 middleman between the cylinder company, as well as with
10 TLI and my client, and he received a cut, he received
11 money in exchange for his actions.

12 Daren Condrey has been at TLI for an extended
13 amount of time. He increased the price of the contract
14 for TENEX. He created sham invoices. He did all of
15 this on his own. There is no evidence that my client
16 directed him to do anything.

17 My client played the role of an intermediary, and
18 that was his function here. The intermediary role was
19 supplying, as the Statement of Facts indicates,
20 information as to time and location as to when the
21 payments were made.

22 THE COURT: So none of this was his idea?

23 MR. LOPEZ: What's that?

24 THE COURT: None of this was his idea, to get
25 payments, kickbacks?

1 MR. LOPEZ: Well, there is no evidence before
2 this Court in any way, shape, or form that that was his
3 idea. And that is the -- the standard that the cases
4 dictate. There needs to be evidence, not conclusory
5 statements, but evidence that this was his idea.

6 The idea is the brain child of --

7 THE COURT: Well, it doesn't have to be his
8 idea, but, obviously, that would be one issue.

9 MR. LOPEZ: Sure.

10 THE COURT: What about the transcript -- I went
11 back and tried to look at everything we had, because I
12 recognize, you are right, there may be some -- well,
13 they certainly have conflicting theories on how all this
14 happened. And so what about the statements made to the
15 investigators and the recording that led to the hearing
16 we had where he talked about, you know, this was a
17 personal commission; he indicated that he could then
18 spread the money between his friends; he acknowledged he
19 was getting the money from this; that it was a private
20 commission that the company didn't know about?

21 So, it certainly gives the impression, at least,
22 that he was actively involved in soliciting this money
23 and that he was directing where some of it would go,
24 spreading it among his friends, I think is what he said.

25 MR. LOPEZ: Sure. Sure. So, I did the same

1 thing Your Honor did and reviewed that statement very
2 carefully. And his statement is entirely consistent
3 with what I am telling you now, that his role was to
4 provide information in time. His statement says that
5 this was actually borne out of a discussion with Rod
6 Fisk, and we went -- and I don't know if you read the
7 April 17th transcript as well, but there was a lot of
8 discussion about Rod Fisk's central role.

9 THE COURT: How is Rod Fisk the leader after he
10 dies in 2011?

11 MR. LOPEZ: Your Honor, so, there were no new
12 contracts after Rod Fisk died in 2011. Absolutely no
13 new contracts. Payments were being paid out on existing
14 contracts that, by the way, Rod Fisk was instrumental in
15 setting up each and every one of them, and that's borne
16 out in the Statement of Facts. If you look at his role
17 as Coconspirator 1, it shows his connection between
18 everybody else.

19 Let me go one step further because it illustrates
20 the point very well. If, in fact, this was my client's
21 brain child and he was the master mind, when Doug
22 Campbell, in August of 2012, comes to him and says, hey,
23 I'd like to keep doing this, my client doesn't take that
24 bait. There are no new contracts with Doug Campbell.
25 That's the end of it.

1 And Doug Campbell even has a quote where he says,
2 And I dare to hope that I can get more work. My client
3 doesn't get more work, and there are no more kickbacks
4 or anything, if there ever were, with Doug Campbell.

5 Similar with the cylinder company. Similar with
6 TLI. Nothing new is signed up. There are no
7 furtherance of new deals to negotiate. There are no --
8 you know, they just pay out what's remaining left on
9 those contracts.

10 And -- and Daren Condrey takes it upon himself to
11 keep making those payments. And if you look at the
12 email that's part of the Government's Exhibit 3 -- it's
13 a pretty interesting exhibit in that it touches on every
14 one of these points -- that is the January 22nd, 2010
15 email, and it shows Rod Fisk's role as a leader and not
16 my client.

17 My client writes to Rod Fisk and says, with respect
18 to the cylinder company, Westerman -- I know it's
19 redacted in your copy -- but it's Rod Fisk is who he is
20 writing to, and if -- at the end, you can see where it
21 says, I need your advice. You know, what are we going
22 to do here with respect to the, quote, unquote, cake?

23 THE COURT: So, he says, "We can keep them as
24 it is or decrease slightly to create cake. Need your
25 advice. "

1 MR. LOPEZ: Yeah.

2 THE COURT: So, first of all, it sounds to me,
3 from that, that he is not simply a ministerial
4 accountant go between. He is actually actively involved
5 in the strategy of this. Should we change pricing to
6 create cake?, as opposed to someone just saying, Hey,
7 send him these account numbers to send things to. It
8 seems to me he is much more involved just from the
9 statement.

10 Then when he says, "Need your advice," you can
11 interpret this various ways, but if he is really taking
12 orders from Mr. Fisk, wouldn't it be, Tell us what the
13 decision is? "Need your advice" implies that he is part
14 of the decision-making process, if not the decision
15 maker.

16 MR. LOPEZ: As Your Honor said, there is
17 several interpretations here, but the one that is not
18 clear at all, certainly not by a preponderance when you
19 go through the various factors of what considers role,
20 is that he is the organizer or leader any more than
21 Daren Condrey or Boris Rubizhevsky or Rod Fisk.

22 Asking somebody: Hey, what are we doing?; I need
23 your advice, indicates strongly, especially taken in
24 consideration with Rod Fisk's central role as recruiting
25 these individuals, introducing these individuals, and

1 being a part of it from the very beginning, you know,
2 what are we doing here?, Daren and Mark, No. 2, is --
3 and he is asking that of Rod Fisk because Rod Fisk is,
4 if anyone, and that's why I say "if anyone," it is Rod
5 Fisk.

6 And if you look at No. 2, he is asking: What's the
7 new company policy? What's the -- what's the
8 understanding? This is now with TLI. What's your role?

9 You have to understand, Daren has been working with
10 Rod Fisk for years at TLI. Rod Fisk used to be the
11 president of TLI.

12 Daren and my client have limited contact. It's --
13 the person that has the contact, that set this up, that
14 was able to ensure that the payments were made after he
15 died is Rod Fisk.

16 No. 3, Doug and Sigma, referring to Doug Campbell
17 again, and our gentleman agreement. What's your role?
18 Vadim is trying to figure out what is happening. All of
19 these decisions lie with Rod Fisk.

20 Now, look, you know, this is the government's
21 exhibit, you know, and it's not one that I was going to
22 say this is my strongest piece of evidence here, but I
23 am just showing you that their strongest piece of
24 evidence that they have provided to you doesn't do what
25 they want it to do and -- and -- in the least.

1 THE COURT: So, let me ask you this. You have
2 described Mr. Fisk's role in detail. I did go back to
3 the testimony regarding the motion, the testimony of
4 Special Agent Gadren. Other than his testimony, in
5 which he acknowledged a few things about what they knew,
6 but, frankly, indicated that they, at the time, didn't
7 know that much about Mr. Fisk's involvement and actually
8 took the view that they were not aware that Mr. Fisk was
9 involved in the transactions between Campbell and
10 Mikerin until later, what is the evidence in the record
11 of Mr. Fisk's involvement other than your
12 representations in your brief?

13 MR. LOPEZ: That's -- that currently exist in
14 the record as we stand here today, sir, I --

15 THE COURT: That's what I am going to go on. I
16 am not going to go on either side simply representing
17 things.

18 MR. LOPEZ: Yeah. I think -- I think the
19 strongest thing that goes in the record is really what's
20 admitted to in the Statement of Facts given that the
21 record is obviously limited to these emails and what we
22 have here.

23 The Statement of Facts, in --

24 THE COURT: I am not limiting it to that, per
25 se. These transcripts from earlier hearings, I think

1 that's all fair game from either side, the suppression
2 hearing, the -- the motion hearing regarding the
3 exculpatory evidence issue. I think that's all out
4 there.

5 Again, when I looked at it, Special Agent Gadren's
6 testimony largely said, Yes, we heard about Fisk, but we
7 didn't actually think he was much of a player at that
8 point in time. There was a discussion about whether
9 they preserved the contents of the safe, but nothing in
10 there that really dealt with or identified the central
11 role that you have laid out. I know, in many of your
12 papers, you have laid this theory out, but I don't know
13 what I have as far as evidence in that.

14 MR. LOPEZ: So, in that April hearing, there --
15 I think it's on page 66, but I can get the exact quote
16 for you -- the attorney for the government, Mr. Ake, in
17 response to figuring out, Well, what would Rod Fisk say
18 if he actually came?; is he going to say anything that's
19 going to be helpful or not?, and -- and Ake says that
20 Rod Fisk would testify that he was involved in multiple
21 conspiracies of money laundering involving numerous
22 payment schemes.

23 And it's true, the government doesn't say much
24 about Rod Fisk's role because they don't know much about
25 Rod Fisk's role. They actually don't know much about my

1 client's role. They didn't find out about Rod Fisk,
2 according to that April 17th testimony, until 2014 when
3 they discovered the Schlyapa account. Yet, their main
4 informant, working with them for years, was, when you
5 look at the email record and what we discussed at that
6 hearing with Exhibits J and O, was in close contacts
7 with Rod Fisk for a very long time; yet, they weren't
8 supposedly aware of his role.

9 Well, I wondered: Did they ask Daren Condrey, as
10 he pled guilty, Well, what is Rod Fisk's role? Where
11 does he fit in? If Daren Condrey is answering honestly
12 to that question, Daren Condrey is saying, Rod Fisk is
13 the reason why I am here doing this; not because of
14 Vadim Mikerin.

15 THE COURT: Well, what about the statements
16 they submit from the plea hearings of Condrey and
17 Rubizhevsky?

18 MR. LOPEZ: That is a great question of Condrey
19 and Rubizhevsky. What do they say? They say -- both
20 those defendants say that, in their Statement of Facts,
21 says that Vadim Mikerin directed them to make payments.
22 That is a word choice issue. It could say informed them
23 to make payments. It is a word choice I am sure Condrey
24 and Boris didn't come up with, but I am sure the
25 government has a stock language as directed to payments.

1 If you look at his Statement of Facts, it doesn't
2 say directed, and it says --

3 THE COURT: But --

4 MR. LOPEZ: Hold on. Let me finish this
5 thought. I'm sorry for interrupting, but I want to get
6 this out because it goes to two points. One is just the
7 impact of word choice, and we saw the impact of word
8 choice on an earlier motion here of extortion versus
9 bribery. You know, what they choose has large
10 ramifications, but there is no evidence anywhere that he
11 directed it.

12 If you look at the Statement of facts, on all three
13 of them, it says, Mikerin and the coconspirators caused.
14 It's all together. Mikerin assisted.

15 THE COURT: I guess the word choice I am more
16 interested in is not directed versus ordered or
17 something else.

18 It's more of Mikerin versus Fisk. My understanding
19 is there is not a lot of -- a lot of Condrey and
20 Rubizhevsky's activities postdate Mr. Fisk, so that's
21 not really a word choice. That's who actually was the
22 person they were communicating with; was it Mikerin or
23 was it Fisk? And so that seems to me not simply
24 semantics.

25 MR. LOPEZ: I agree with you. And Mr. Fisk is

1 not in there, and -- and if they had asked him and that
2 was part of the allocution and if he was alive today,
3 then exactly what Ake was arguing very strenuously
4 before would come to light, and you would see exactly
5 that Fisk was the leader of this organization.

6 But what -- what the real point is, not that it
7 doesn't say as much about Fisk, it says -- what does it
8 say about my client? It says nothing about my client.
9 It says he directed them. That's it. There is nothing
10 else in there at all in any way, shape, or form that
11 goes to his role. It just says he directed them.

12 Well, you know, I am curious, again, what the role
13 enhancement arguments look like for Condrey or Boris
14 because if the act of saying, Hey, here is where you
15 send the money, informing slash directing, what about
16 these guys that start, you know, sham consulting
17 agreements, fake invoices that agree to this situation
18 to get a benefit that they hope to see -- you know, to
19 hopefully get a benefit that they are seeking.

20 This is sophisticated people, each doing their own
21 part. And the idea that -- that Vadim Mikerin is
22 somehow the organizer or leader because he, you know,
23 directed where the payments go, or asked, Where are the
24 payments? -- and, again, I would submit the right word
25 is "inform." And I am not trying to be cute by that. I

1 am saying that's exactly what he did.

2 THE COURT: Okay. Well, let me hear from the
3 government. I have a lot of questions for them on this
4 stuff as well.

5 So, Mr. Wernick, I mean, I will tell you, I am not
6 convinced by Mr. Lopez that they have proven that
7 Mr. Mikerin was not an organizer or leader, but it's
8 your burden, so I am also acknowledging that I think the
9 evidence isn't completely straightforward on this issue.

10 So, what actually is the evidence that shows that
11 he was an organizer or leader and not -- even if I don't
12 accept the notion that he was simply doing Mr. Fisk's
13 bidding, one possible interpretation of all these facts
14 is that there are these executives and there was
15 Mr. Mikerin, and it's not clear to me who originally had
16 the idea, but regardless of who did, why aren't they all
17 equals each getting their own share of this, him getting
18 the payments, them getting their contracts? It seems
19 like you need to have more than saying that he is the
20 one who has told them where the bank accounts were.

21 MR. WERNICK: Yes, Your Honor, and there is
22 much more. The simple answer is because the evidence
23 shows that he was the organizer and leader. I will go
24 through some of that evidence.

25 First, let's just look at his role in the company.

1 He starts as a director of Pan American activities with
2 TENEX, then turns into being the president of TENAM, the
3 Russian state-owned entity in the United States. So he
4 is on top of the food chain in that company.

5 He -- the evidence is showing him directing the
6 scheme over ten years through multiple individuals, not
7 just Coconspirator 1, but when Coconspirator 1 does die,
8 he immediately moves on to Boris Rubizhevsky.

9 When Rubizhevsky --

10 THE COURT: So, when you say "the evidence,"
11 again, the evidence I have is the hearing transcripts
12 that we have had. It's whatever either party submitted.
13 I am not taking the notion that Mr. Fisk was the ring
14 leader just because the defense says so, but I am not
15 going to take the view that he directed all these things
16 without you pointing to me some actual evidence on that.

17 So what are you referring to?

18 MR. WERNICK: Thank you, Your Honor. Let me
19 first start by saying, obviously, we did not put forward
20 the entire government case in evidence in all our
21 pleadings. We have an ongoing investigation.

22 THE COURT: But just to point you to this,
23 because I have had this issue with the government on a
24 lot of sentencings, okay, you can choose what to give
25 me, but you can't rely on stuff you don't give me, and I

1 have had a problem with that with your office on this
2 office on a number of occasions. And just proffering
3 something that's out there is not going to do it.

4 So, point to specific facts that show me -- so, for
5 example, what is the evidence that he -- it was his
6 idea? Or do you say it wasn't necessarily his idea?
7 And I don't think that's dispositive, but do we know
8 whose idea this whole scheme was?

9 MR. WERNICK: I think if you look at the
10 totality of the evidence as taken by the proceedings
11 before Your Honor, as taken in the statements of
12 offense, as submitted in the Boris Rubizhevsky plea
13 hearing showing the timing of his events, when he was
14 called upon by the defendant to take part in his money
15 laundering conspiracy, if you look at the evidence as --
16 as set forth by Daren Condrey in his plea agreement and
17 the timing of his activities.

18 You -- Your Honor certainly is aware that
19 Coconspirator 1 died in 2011; yet, the conspiracy lived
20 on.

21 It is not dispositive that it is the defendant's
22 idea, but certainly the evidence that it was the
23 defendant telling each of these individuals which
24 accounts to send money to offshore, when, on specific
25 days, to send that money, the timing, the direction, the

1 -- the players involved, all who just rotate at the
2 defendant's whim to be used by the defendant, that's
3 what the evidence shows. We did --

4 THE COURT: What's the evidence on the
5 recruitment of others? So who brought in Rubizhevsky?
6 Who brought in Condrey? Who brought in the other
7 executives that are listed in the document? And what's
8 the evidence that it was Mr. Mikerin as opposed to
9 Mr. Fisk or somebody else who brought them into this
10 operation?

11 MR. WERNICK: I am looking first at Exhibit 1
12 to the sentencing memorandum, which is Mr. Rubizhevsky's
13 plea agreement, and it talks about Foreign Official
14 One -- obviously, that being Vadim Mikerin -- and how he
15 engaged intermediaries, including Rubizhevsky, to
16 transfer payments from Cylinder Corporation A into
17 foreign bank accounts. It is in the active voice. It
18 is talking about -- and it goes through, if you look at
19 his plea agreement, I think you can only take from that
20 that he was recruited by the defendant.

21 Mr. Condrey --

22 THE COURT: Is that your understanding from
23 other evidence as well? I mean, are you just going off
24 of this document --

25 MR. WERNICK: No. No. Your Honor, I think --

1 it's in that document, but if I knew of any other
2 evidence to the contrary, I would certainly --

3 THE COURT: Let's go back to Mr. Campbell, for
4 example. I mean, did Mikerin approach Campbell or did
5 Campbell approach Mikerin, or -- or was Fisk involved?

6 MR. WERNICK: Our understanding, Your Honor,
7 that, of course, that conduct is not part of the current
8 charge and it's not being asked that the Court recognize
9 that as relevant conduct for purposes of this plea.

10 THE COURT: Well, this is a conspiracy. We are
11 trying to figure out who is the leader of the
12 conspiracy, who is an organizer, if any.

13 MR. WERNICK: And that being said, I think the
14 evidence would show that it was Mr. Campbell who was
15 recruited by the defendant as well. I don't -- I don't
16 think I have to back away from that.

17 Now, there could be some suggestion, based on the
18 interaction between the two, that both sides would
19 benefit, certainly. But it was Mr. Campbell who then
20 reported this interaction to the government, which
21 caused the government to start paying closer attention
22 to the defendant.

23 So, I -- I do think that I -- that would not be
24 contradictory, the evidence set forth before the Court
25 in this plea.

1 When you are looking at the multiple -- again, the
2 -- what we put before the Court, in addition to the plea
3 agreements, and -- was also to show the number of
4 players involved and to -- and I think the timing is
5 key, and the big thing that the defendant has had pains
6 to overcome is the fact that if Mr. Fisk were the
7 director of this scheme, then how do you explain
8 Mr. Rubizhevsky's involvement, who had nothing to do
9 with Mr. Fisk, who was recruited by Mr. -- by the
10 defendant? How do you explain the conspiracy continuing
11 on with Daren Condrey and Executive B?

12 This is -- the evidence is before the Court to make
13 the finding that he was a leader and an organizer.

14 The sham company --

15 THE COURT: So your evidence is the Plea
16 Agreement's Statements of Fact, which I am sure you
17 acknowledge were not -- I mean, I agree -- I mean, words
18 matter, and I don't think we can substitute in "inform"
19 for "directed" when it doesn't stay "inform," but at the
20 same time -- it would be a little more convincing if we
21 had an affidavit or live testimony about this actual
22 issue as opposed to a prosecutor's written Statement of
23 Facts that someone signs.

24 MR. WERNICK: And, Your Honor, I mean, it was a
25 Statement of Facts sworn before this Court by two

1 individuals, both of whom said that the defendant
2 directed the conspiracy.

3 THE COURT: Well, but the purpose of it was to
4 identify that individual's involvement. The purpose was
5 not to catalog the involvement of others, which is what
6 you are trying to use it for.

7 MR. WERNICK: I think it's --

8 THE COURT: I just feel as if there is a little
9 bit of a disconnect there where, you know, if you were
10 -- if you wanted to offer his, you know, statements by
11 these two individuals as to what the role of Mr. Mikerin
12 was, this is a little bit of a questionable version of
13 that because he didn't have to say anything about
14 Mr. Mikerin's role to plead guilty, which is what the
15 purpose of that document was.

16 MR. WERNICK: And the immediate purpose of that
17 document was to make out the elements of the offense for
18 sure, Your Honor, but it also was highlighting the
19 involvement of other coconspirators, and, in this case,
20 showing that this other coconspirator, namely, the
21 defendant, was in charge and directing them to do what
22 they needed to do.

23 It is an important detail that the bank accounts
24 were something that was wholly in the knowledge of the
25 defendant. The timing of the payments were set forth by

1 the defendant. Those are not something to be cast away.
2 Those are not insignificant details. Those are
3 important details. And in addition, I mean, it is TENEX
4 that has the contracts.

5 One thing also I would take note of, parent
6 Corporation A is an entirely new player in 2013, and
7 that is directed by the defendant. That's not something
8 -- that was a new contract. That was not something in
9 place when --

10 THE COURT: Can you give me more details about
11 that? Remind me, is there a name of a company or an
12 individual that you can disclose for that because it's
13 confusing to me as to which one you are referring to?

14 MR. WERNICK: Mr. Rubizhevsky, in his plea
15 agreement, he is involved in money laundering scheme,
16 which involved money that originated with Parent
17 Corporation A. I can't get into further detail about
18 that, Your Honor, because that name has not been made
19 publicly available and is part of an ongoing
20 investigation, but I can just point Your Honor to
21 Exhibit 1 to the government's memorandum.

22 THE COURT: Okay.

23 MR. WERNICK: The timing, though, was in 2013,
24 and it's a \$39,000 kickback payment in 2013, that was
25 where Mr. Rubizhevsky was the middleman. Daren (sic)

1 Fisk -- excuse me, Coconspirator 1 had long passed at
2 that point. That's just one example of the conspiracy
3 moving on and of a new player being involved in terms of
4 that corporation in addition to Executive A, his
5 involvement in that.

6 One thing I would -- I would also mention is the
7 sham invoices and contracts. Those are something also
8 directed by the defendant. That's what the evidence
9 does show in this case.

10 THE COURT: Where? In the document? Which
11 document?

12 MR. WERNICK: I will -- Your Honor, I will just
13 have to submit on the record. I can't point to a
14 particular page in a transcript or to this document. If
15 it's not in the record, then, certainly, Your Honor
16 should not consider that. I was responding just to that
17 one statement made by the defense a moment ago.

18 I would -- and if you look at Exhibit 1 again to
19 the sentencing memorandum, the language being used there
20 just points directly to the language by Coconspirator 1
21 on the second-to-the-last page, the email dated March
22 12, 2009, "Dear Vadim, I have given some additional
23 thought to the discussions I had with you and (sic)
24 yesterday and have some suggestions for your
25 consideration," and then he goes forward with some

1 suggestions.

2 This is not the words of a person directing
3 Mr. Mikerin to do anything. These are the words of an
4 assistant reporting up to ladder to somebody to give him
5 suggestions to take into consideration; you decide.

6 Ultimately, the discussion that Mr. Lopez pointed
7 out a moment ago on the first page, talking about cake,
8 and Mr. Mikerin asking Coconspirator 1 for his advice.
9 And simply -- and what's happening there, Your Honor, is
10 he is talking about two things in this. Number one, he
11 is talking about -- he is relying on Coconspirator 1 as
12 one of his men on the ground in the United States before
13 TENAM is opened up, essentially. And he asks, Look, you
14 are leaving the company -- transportation company,
15 Corporation A, you are leaving. The people left are
16 going to be Daren Condrey and Executive B. Is, you
17 know, this is going to continue along the lines we have
18 already set forth. Right? This is his plan. He is
19 just making confirmation that this plan that he has set
20 up will be continuing, or does he need to go out and do
21 additional exercises on his own?

22 But he goes on to -- just, basically, goes through,
23 what is the cake situation? What is the story with the
24 kickbacks? And also earlier in that, that discussion
25 above and included in this email is about Cylinder

1 Corporation A as well and the cake and kickback payments
2 that they are going to be setting up with that company
3 as well.

4 THE COURT: Can I just ask, the \$2 million that
5 are subject to the order of forfeiture, remind me what
6 -- the circumstances of how those were obtained by the
7 government. Was it a bank account that Mr. Mikerin had?
8 Was it one of the ones that this money was being sent
9 to, or was it a different account?

10 MR. WERNICK: These are all -- this is an
11 accounting for all of the bribe and kickback payments,
12 essentially, that were made through Transportation
13 Corporation A and through Cylinder Corporation 1 and
14 Parent Corporation A that were directed as part of this
15 scheme to the offshore accounts.

16 THE COURT: It's a money judgment, if I am not
17 mistaken, so did Mr. Mikerin have that money lying
18 around when the government came knocking, or is it just
19 that you have calculated that and you are saying he owes
20 that money, but you actually don't know how much of it
21 originally went into his pockets?

22 MR. WERNICK: We cannot tell you, Your Honor,
23 how much of that money ended up in his pockets. We can
24 say only that -- the only evidence before the Court is
25 the \$127,000 has already been seized as part of this

1 case. There is money that went to offshore accounts,
2 and we cannot tell you that Mr. Mikerin himself withdrew
3 that money.

4 I would point to the language already discussed,
5 Your Honor, that is in the record, that -- where the
6 defendant explains that this is money that he was
7 sharing among him and others, you know, according to
8 him, that the company did not know about. But it -- so,
9 certainly, I would not go further than that.

10 MR. LOPEZ: Your Honor, can I be heard?

11 THE COURT: Let me just finish with
12 Mr. Wernick. I will give you a chance to respond.

13 MR. WERNICK: And Your Honor, I would also
14 point just to Exhibit, I believe it's Exhibit 3. When I
15 said "Exhibit 1" earlier, talking about that email, I
16 think that was Exhibit 3.

17 And then Exhibit 4 is the email from the Marvin
18 Jodel account on August 30, 2013.

19 If you are looking at that email, that is from the
20 defendant using an alias email account on August 29,
21 2013, and he is writing this to one of his
22 coconspirators here.

23 He says, "Hello. Just wanted to kindly ask you to
24 synch with Daren" -- talking about Daren Condrey -- in
25 order to settle this \$30,900. That's talking about the

1 Parent Corporation A money. "They know the ropes and
2 all we need is to proceed and get a final result."

3 This is also showing he has already set this up
4 with Daren Condrey. They know the ropes. I have
5 already put this in place. Now it's your turn. You go
6 and talk with him and you organize the payment.

7 THE COURT: Who is this going to?

8 MR. WERNICK: I am fairly certain I can refer
9 to this, but I am almost -- I am certain this is
10 Executive A.

11 THE COURT: Okay.

12 MR. WERNICK: And Executive A was a person who
13 worked for Cylinder Corporation One. The parent
14 corporation of Cylinder Corporation One was Parent
15 Corporation A. I know this is a little confusing, Your
16 Honor. I apologize for the anatomization.

17 But this email is referring to the \$30,900 that
18 ultimately Mr. Rubizhevsky helped to be the middleman
19 on. Actually, Mr. Rubizhevsky had bowed out by then.
20 Excuse me. And when Mr. Rubizhevsky was no longer
21 willing to participate, they moved on to Transportation
22 Corporation A, who then was run by Daren Condrey, to be
23 the middleman.

24 Transportation A not only acted at the defendant's
25 direction as directly paying corrupt payments, but, in

1 this circumstance, they even used them as the middleman
2 for corrupt payments by corporation -- Cylinder
3 Corporation A and Parent Corporation A.

4 THE COURT: Okay.

5 MR. WERNICK: Daren Fisk -- excuse me.
6 Coconspirator 1 had nothing to do with it.

7 THE COURT: Okay.

8 MR. WERNICK: One final thing. Even if you
9 take the defendant's arguments as true, the law does not
10 require there be only one leader and organizer. We
11 think, though, that certainly the defendant was that
12 leader and organizer, but even if you accept all of Mr.
13 Lopez's arguments, there could be two.

14 THE COURT: Mr. Lopez, do you want to respond
15 to something?

16 MR. LOPEZ: Your Honor, I have a few responses.
17 One is I think it's really important to make sure that
18 Your Honor's questions are answered with respect to
19 timing and with respect to who did what.

20 In particular, your first question was: Whose idea
21 was this? The government has absolutely no evidence
22 that it was my client's idea. They have nothing to show
23 to that.

24 When you asked who -- did Doug Campbell come to my
25 client or did my client go to Doug Campbell, and where

1 was Rod Fisk?

2 The evidence shows, and this is Agent Gadren's
3 testimony at the April 17th hearing, specifically, page
4 49, lines 23 to 25, admits that Fisk introduced Doug
5 Campbell to Mikerin. That's really not in dispute at
6 all. It was Doug Campbell -- it was Fisk bringing Doug
7 Campbell to Mikerin.

8 The timeline on Barry -- I'm sorry, on Boris
9 Rubizhevsky and the government's arguments that it must
10 have been his conspiracy because Boris Rubizhevsky
11 became involved after Rod Fisk's death, not true. Boris
12 Rubizhevsky was involved well before Rod Fisk's death,
13 and Rod Fisk is the one that introduced Boris to the
14 team.

15 Now, can I show that with something in the record?
16 Well, that hasn't come up in the record. They can't
17 show if it was the other way around, I guarantee you
18 that, and it's their burden, as you said.

19 Parent Company A, there is no evidence whatsoever
20 that that was my client's idea. None. Zero. Zilch.
21 Whatever TLI did or Westerman did or Boris Rubizhevsky
22 did or whoever was responsible for Parent Company A,
23 that's their evidence of role in this offense, not my
24 client's.

25 They are stringing together lots of words and lots

1 of phrases and saying it's my client. He says, Boris
2 Rubizhevsky's Statement of Facts says my client directed
3 the conspiracy. It does not say that. It does not say
4 that anywhere. So let's be very careful about this.

5 You asked a question about money. There is not one
6 shred of evidence that my client has one dollar from
7 this event. Yes, he's getting hit with the full two
8 million forfeiture, and we will talk about that when we
9 get to the 3553(a) factors, because guess how much Boris
10 is involved in, according to his plea agreement, is
11 being hit with? 26,000. Guess how much he Daren
12 Condrey is? Looks like nothing. That's the way it
13 looks to me. But my guy is taking it on the chin here
14 for the full amount with no evidence that he put a
15 dollar in his pocket.

16 The government said, Well, we can't show --

17 THE COURT: Well, we have his statements to the
18 agents where he acknowledged he was getting private
19 commissions and he was -- I mean, you can't say he
20 didn't -- I mean, we don't know the exact numbers, but
21 --

22 MR. LOPEZ: Hold on one second. Hold on a
23 second on that because that -- statements to the agents,
24 taken without an interpreter, where he admits that he
25 hopes to get money, that's true. And look, you know, if

1 the -- you have to be very careful about that because
2 that was without an interpreter. But when you go to the
3 -- and he is not going to shy away that he hopes to get
4 money. No one is going to dispute that. But is there
5 any evidence that he got any? No.

6 And the government can go a little bit further than
7 what they talked to you about a second ago. We got an
8 email from the government last week that says that they
9 received the returns of some mutual legal assistant
10 treaty request, looking for the money that went
11 overseas, and they said that they have no evidence that
12 my client withdrew a dollar of that.

13 So there is zero evidence to talk about my client
14 getting any of the payments, and they can go a lot
15 further than what they discussed with the Court about
16 their lack of evidence. They don't have it.

17 Payments. Oh, well this is -- you know, it's a big
18 deal that my client talks about the payments. Well,
19 guess who else had payment information in the safe that
20 came out in the April 17th hearing? Rod Fisk.

21 Now, I am not going to sit here today and tell you
22 100 percent, you know, everything is all Rod Fisk across
23 the board and everybody else is a stooge, but I will say
24 this: All of these players here had an equal role in
25 this event, and there is no reason for my client to be

1 -- to be tied with the organizer or leader.

2 When you look at the factors that you are supposed
3 to consider, exercise decision-making authority, there
4 is no evidence of him exercising decision-making
5 authority.

6 Nature of participation. No different than anyone
7 else. We talked about that.

8 Recruitment. Zero evidence of recruitment. Zero.
9 The government wants to come up here and tell you that
10 he recruited Boris Rubizhevsky. No evidence on that
11 whatsoever.

12 Claimed/ranked to a larger share. Again, he hoped
13 to get money. No evidence that he got it. But guess
14 where there is evidence of people getting money? Boris
15 Rubizhevsky got a kickback. Rod Fisk got kickbacks.
16 Daren Condrey, through TLI, got a -- TLI, through Daren
17 Condrey, got a kickback. That's in the Statement of
18 Facts for Daren Condrey. Last paragraph.

19 Degree of control over others. Zero evidence.

20 Exercised, managed responsibility over assets.
21 There is no evidence that he touched any of these wire
22 transfers.

23 The \$124,000 that they seized from his account,
24 they haven't tied that to anything. They haven't tied
25 that to a thing. They just took the money, and it's

1 part of our negotiated settlement and that's what it is,
2 and I can't explain about that.

3 But in the background section of the guidelines,
4 after the Application Notes, it talks about role, and it
5 talks about in terms of relative responsibility and
6 profit, as well as danger, you know, assigning a role
7 for greater danger to the public because they are likely
8 to recidivate. You don't have those issues here. You
9 don't have an issue of relative responsibility being
10 disproportionately netted out. It's just not here. You
11 definitely don't have a recidivism issue here.

12 Role doesn't apply, Your Honor. And the government
13 has, you know, just made some accusations but can't
14 point to anything, and, in fact, confuses the issue more
15 than helps the issue.

16 THE COURT: So, the government cites the *United*
17 *States vs. DeRiggi* from the Second Circuit.

18 Do you have anything to say about that case?

19 MR. LOPEZ: Yes, Your Honor, I do. One second.
20 Let me find that case.

21 THE COURT: I mean, there is certainly some
22 factual distinctions, and I will not disagree with that.

23 MR. LOPEZ: Yeah.

24 THE COURT: The case does deal with this issue
25 of the top leader in the organization that's receiving

1 bribes without whom the whole operation cannot occur.

2 If Mr. Mikerin is not playing ball, there is no
3 game, so why isn't that an issue with respect to role?

4 MR. LOPEZ: Because there is nothing in any
5 Application Note or any factor or anything that says,
6 just because you are on the top of the organization, you
7 automatically get a role enhancement. That's not a role
8 enhancement at the top.

9 THE COURT: Well, this case doesn't say it that
10 black and white, but it does indicate it's a significant
11 part of its decision-making process.

12 MR. LOPEZ: But in that case, he recruited
13 subordinates. There is no one else at TENEX, TENAM,
14 anywhere that has anything to do with this. He didn't
15 recruit anybody. He didn't do anything.

16 In that case, there was, you know, an issue of
17 recruiting coworkers and that that person didn't blow
18 the whistle. And that's a Second Circuit case out of
19 1995. This is not the case that's going to control
20 these set of facts. You know, any one of these people
21 in any one of the schemes, if they are not there, they
22 are not, you know, it doesn't happen.

23 THE COURT: Okay. One last question for you,
24 Mr. Wernick, just on this question of Rubizhevsky.

25 So, you must know, one way or the other, whether it

1 was Mr. Mikerin or Mr. Fisk or someone else who brought
2 him into this.

3 Is there any evidence that shows, other than the
4 statement in the Plea Agreement Statement of Facts, that
5 Mr. Mikerin brought Mr. Rubizhevsky in as opposed to
6 somebody else bringing him into this conspiracy?

7 MR. WERNICK: Your Honor, may I consult for one
8 moment on what has actually been placed in the record?

9 (Pause.)

10 MR. WERNICK: We certainly know of evidence
11 from Mr. Rubizhevsky, himself, that he was recruited by
12 the defendant.

13 I don't know -- I can't tell Your Honor whether
14 that's in the record before this Court or not, so I
15 would have to just settle on what's in the record at the
16 moment.

17 THE COURT: Okay. Thank you.

18 MR. WERNICK: May I point to two other things
19 just in brief rebuttal, Your Honor?

20 THE COURT: Okay. But I am going to give him
21 another chance. It's his objection, so this is going to
22 go on forever if you keep raising issues.

23 MR. WERNICK: The only thing I was going to
24 say, Your Honor, is it's been mentioned that money that
25 was in the safe, Coconspirator 1's safe, the money that

1 was in that safe was two envelopes -- and this is
2 information that's been provided to the defendant --
3 \$10,000 cash and \$5,000 in cash, both of which were
4 sealed and had the defendant's name signed on the back
5 over the seal. That was his money, and it's the money
6 that he went to collect from Coconspirator 1 after
7 Coconspirator 1 died.

8 THE COURT: Okay. Thank you.

9 MR. LOPEZ: Your Honor, I'd like to address
10 that.

11 THE COURT: Only on this issue. Nothing else.

12 MR. LOPEZ: Only on that issue. I promise.

13 There is no evidence anywhere as to what that money
14 was for that the government can point to at -- at -- at
15 all that had anything to do with this set of facts in
16 any way, shape, or form.

17 If the government is going to be proffering what
18 Boris Rubizhevsky might say, and then say, oh, but don't
19 consider it, but let me tell you what he would say, then
20 let me proffer what the explanation of that money is.

21 That money was seed money to start up TENAM, the
22 company here that Rod Fisk, the government is correct,
23 was helping to set up from the very beginning, and our
24 -- my client had money in cash to help make that happen.

25 He was living in Russia, by the way, on the

1 whole -- you know, just to go one second outside of what
2 we are talking about -- the majority of this time, my
3 client is in Russia. Rod Fisk is the one here. He
4 doesn't show up here until 2012. He gives Rod Fisk the
5 seed money to hold onto it, and so, when he gets here,
6 he has money to start up TENAM.

7 That's the explanation of the money. It has
8 nothing to do with this scheme.

9 THE COURT: Okay. So, I obviously heard a lot
10 from both sides. I appreciate the additional
11 information and argument on this issue.

12 On the issue of the four-level increase for the
13 role adjustment here, let me just review what I
14 understand and what my conclusions are.

15 First, I do think the activity did involve five or
16 more participants, which is one of the requirements,
17 including Mr. Fisk, Mr. Mikerin, Mr. Condrey,
18 Mr. Rubizhevsky, and Executives A and B.

19 The factors to consider in terms of whether
20 Mr. Mikerin was a leader or organizer under Section
21 3B1.1(a) include: the nature of his participation; the
22 nature and scope of the illegal activity; whether he had
23 decision-making authority; his recruitment of others;
24 and the degree of control and authority that he
25 exercised.

1 It's clear that Mr. Mikerin did direct where the
2 kickback payment should be made, such as to what bank
3 account and some communications to ensure that the
4 payments were made, so he certainly asserted a certain
5 degree of control and authority over the operation.

6 But the defense argues that this role was more
7 ministerial than decision-making, that he was simply
8 facilitating the transfer of funds, and that the actual
9 organizer or leader was Mr. Fisk.

10 I do find that there is certainly some evidence of
11 the role of Mr. Mikerin as someone who had a degree of
12 control and authority and who had some decision-making
13 authority.

14 In particular, I point to the email of January
15 22nd, 2010, in which he indicated his analysis that this
16 is a perfect platform for very personal discussions; we
17 can keep them as it is or decrease slightly to create
18 cake, which indicates -- a need for your advice, which
19 indicates he is part of a decision-making process of how
20 to move this conspiracy forward.

21 He is asking for advice, so he is not simply taking
22 orders from someone else, but he is asking to have a
23 discussion about how to proceed with this. So there is
24 evidence to that effect.

25 There are also the statements in the Statement of

1 Facts indicating that Mr. Mikerin directed the kickback
2 payments to be made, that they were for the benefit of
3 Mr. Mikerin, and also that he engaged intermediaries,
4 which, arguably, involves recruitment, but I find that
5 specific evidence relatively thin on the question of
6 exactly who brought people into the conspiracy since
7 engaging intermediaries is not exactly the same thing as
8 recruiting people. It may just be talking to them about
9 particular transactions.

10 So, although there is evidence that supports the
11 idea that he is a, someone who is involved -- and I will
12 also add to that that he has spoken in his -- in the
13 transcript of the suppression hearing of the money as
14 personal commission for Mr. Mikerin; that he had the
15 opportunity to spread it among friends; that it was part
16 of making business.

17 So, I certainly don't find that he was a minor
18 player in this, who was simply exercising a ministerial
19 function, someone who was not benefitting from this,
20 but, at the same time, I am not in a position to find
21 that the government has met its burden of establishing
22 that he was an organizer or leader here.

23 First of all, I think it's a relatively unique
24 situation; very different from the standard arrangement
25 in this where you have a drug operation with a leader

1 and people with various roles below it.

2 On the one hand, there is no question that
3 Mr. Mikerin stood to benefit from this scheme, even
4 though it's unclear how much he got. He made statements
5 to Special Agent Gadren indicating that this was a
6 personal commission; he was getting money from this.
7 The statements by Rubizhevsky and Condrey indicate that
8 he was benefitting from this. But, at the same time,
9 everyone else was benefitting as well, perhaps more,
10 because the other executives were getting contracts for
11 their companies that were worth arguably much more than
12 Mr. Mikerin was getting.

13 So, even though he was getting the lion's share,
14 perhaps, certainly relative to the other coconspirators
15 as the money changing hands as part of this money
16 laundering, the scale of the operation was such that it
17 wasn't clear that that was the focus of it. The focus
18 was getting companies and executives at those companies
19 to get the benefit of those companies receiving
20 contracts. So it's not clear that he stood to benefit
21 more than anyone else in this conspiracy.

22 It's also not clear that he recruited others, as I
23 indicated. I do accept that the Statements of Facts are
24 evidence to be considered, but I think they need to be
25 considered in the context of how they are prepared,

1 which is that they are prepared to acknowledge a
2 defendant's own individual role in the operation.

3 I don't think they were ever designed to provide
4 evidence for a sentencing of another defendant. And
5 although they may be acceptable, I think if that's what
6 we have -- if that's what we are limited to on
7 recruitment, I don't think it's sufficient to show, by a
8 preponderance, that there was a recruitment of others
9 specifically to this operation.

10 As I indicated, there certainly is evidence that
11 Mr. Mikerin was part of discussions about how to move
12 forward with how this would work, that he was not an
13 underling, but that he was, at a minimum, equal to
14 others, but, again, it's not clear that he had ultimate
15 decision-making authority over how all of these
16 operations would work. It seemed as if both sides
17 needed each other, the executives as well as the --
18 Mr. Mikerin.

19 So, on the one hand, he may have been directing
20 things, but at other times, perhaps, there were -- it's
21 unclear that he directed the other executives in the way
22 that a drug organizer or a leader directs underlings to
23 carry forth.

24 The best indication that I have that Mr. Mikerin is
25 clearly, or could be a leader in this is the theory

1 under *United States vs. DeRiggi* from the Second Circuit,
2 which indicates that the top official in an organization
3 where bribery was occurring could be deemed a leader or
4 organizer by virtue of that leadership position because
5 the scheme could not exist without its support or
6 participation.

7 I think those facts do apply -- or that scenario
8 does apply here, and I think that that's a theory that
9 one could use to apply this enhancement, and I think if
10 there were clear enough evidence that he had the -- the
11 most significant role in this operation, then I would
12 consider applying it here. But it's not controlling
13 authority.

14 I do think it's persuasive as a concept, but I
15 would read it as requiring at least some clear evidence
16 that this person was at least at the top of the
17 organization. And although I think he was at the top of
18 the organization, it's not clear to me that he was
19 sufficiently distinguishable from the others involved to
20 warrant the enhancement here.

21 It sounds as if the government may have had other
22 evidence that would have been more convincing on that
23 point, but it, of course, has to make its choices
24 regarding what to offer in a proceeding like this, and
25 given what it's offered, I am going to deny the

1 enhancement, or, in this case, grant the objection to
2 the PSR. So, I will not apply the four-level
3 enhancement for role.

4 What that does is it means that the total offense
5 level is 25, the criminal history category is I, and so
6 I find that the guideline range is 57 to 71 months.

7 Because of the five-year mandatory minimum --
8 five-year maximum penalty on this offense, the actual
9 guideline range, technically, is 57 to 60 months. And I
10 find, as indicated in paragraph 62, that the guideline
11 range for supervised release is one to three years. I
12 believe the fine range is, under the 2014 guideline
13 book, which is what we are supposed to follow in a case
14 like this, it is \$10,000 to \$100,000. The special
15 assessment would be \$100.

16 Are there any objections to those calculations
17 other than the objection regarding the role enhancement?

18 MR. WERNICK: Not from the government, Your
19 Honor.

20 MR. LOPEZ: Your Honor, just with respect to
21 supervised release, the defense agrees with the
22 probation report, paragraph 63, that says, under the
23 guidelines, 5D1.1(c), the Court should not impose
24 supervised release when a defendant is likely to be
25 deported.

1 Government -- we have talked with the government,
2 and I don't think they are going to be asking for
3 supervised release, so --

4 THE COURT: I understand. I am just laying out
5 what the actual guidelines are on this issue.

6 So, what we have left, then, is just to discuss
7 what the appropriate sentence is.

8 What I'd like to do is start with anyone other than
9 counsel or the defendant who would like to speak, if
10 there is anyone, and then after that, I will hear from
11 the government on their recommendation, then the defense
12 counsel, and then Mr. Mikerin, if he would like to
13 speak.

14 So, is there anyone that either side knows about,
15 other than counsel and the defendant, who are interested
16 in speaking?

17 MR. WERNICK: The government will not be
18 calling any witnesses.

19 MR. LOPEZ: No, Your Honor.

20 THE COURT: So why don't we start, then,
21 Mr. Wernick, with the government's argument on
22 sentencing.

23 MR. WERNICK: Thank you, Your Honor.

24 Much of our argument is set forth in the briefing
25 before the Court. I will say, Your Honor, I want to

1 point to some specific things.

2 This case involves a defendant who is a Russian
3 official, an employee of TENEX and TENAM in the United
4 States, both state-owned entities responsible for the
5 transportation of nuclear energy to America. It's an
6 interesting program. The program involved the
7 down-blending of nuclear weapons. It initially involved
8 the down-blending of nuclear weapons from the former
9 Soviet Union to be used in civilian purposes here.
10 Obviously, a very sensitive area and one that could be
11 of great use. Nobody wants nuclear weapons if they are
12 not needed, obviously, and civilian use of nuclear
13 technologies is a new thing.

14 The defendant, over the course of ten years,
15 corrupted that process. He is initially from Russia,
16 visiting America frequently, and then opening up a post
17 in America, corrupted the process.

18 We believe -- the understanding of his role in the
19 offense involved coordinating and essentially
20 orchestrating people to pay him corrupt payments,
21 bribes, kickbacks to offshore entities that he knew
22 about and -- and -- and directed the payments to. Over
23 the course of ten years, we are talking about over \$2
24 million in corrupt payments that are before the Court.

25 This is done here with his promise to these

1 executives that he would help them obtain improper
2 benefits in gaining contracts with TENEX. So, companies
3 in the United States that wanted a part of this process,
4 wanted to provide the logistical support in transporting
5 nuclear fuel, had to pay to play. They had to pay the
6 defendant, at his direction, in order to be involved in
7 the process.

8 Now, we have gone through a lengthy discussion.
9 Obviously, Your Honor is familiar with the government's
10 position on what his role was in that scheme.

11 One thing, and I don't want to get into that any
12 further, but one thing I do want to talk about is this
13 idea of corruption in this circumstance. Corruption is
14 always troubling. It is something that erodes faith in
15 the system. It is something that corrupts a belief in
16 the rule of law.

17 In this case, both here in the United States and
18 also back in the defendant's home in the Russian
19 Federation, and given his role as a Russian official, it
20 compromised the integrity of the process, subjects
21 people to compromise as well.

22 And this is particularly troubling in a
23 circumstance where the defendant is dealing with nuclear
24 technology and nuclear fuel. It's an area that we don't
25 want compromised. It's an area we don't want people to

1 be compromised as part of the process who would then
2 have their principles possibly compromised in other
3 ways. There is a snowball effect here that we have to
4 recognize once people make the decision to make corrupt
5 payments and to solicit those corrupt payments.

6 Now, you have to ask why; why would a defendant do
7 this? One answer obviously that comes up in these cases
8 typically is greed, that somebody wants the money. And
9 certainly there is evidence in the record that he did
10 get some of this money, as the Court acknowledged a
11 moment ago.

12 The defendant has gone through some pains, however,
13 to say that he did not really benefit from this scheme,
14 and if that is the case, then why? Why is a Russian
15 official coming to the United States, soliciting bribes
16 from U.S. companies and soliciting bribes from U.S.
17 executives, putting them in those compromised positions
18 in such a sensitive area?

19 I don't know the answer to that, and the
20 defendant's scheme was stopped before it went any
21 further, but these are very troubling issues to
22 consider. And if it's not greed, then what was the
23 reason? And people act for a reason.

24 The defendant has no excuse for his conduct. He
25 came from, actually, a very stable family, a family --

1 his father is a man of great notoriety in his homeland.
2 This is not something that he needed to do. It's
3 something that he did. It's something that corrupted
4 the system. It corrupted the process.

5 He's looking at a guideline range of 57 to 60
6 months. We don't believe he has done anything to earn
7 mercy in any way here to get a below guideline sentence.
8 We are asking the Court to give a guideline sentence.

9 In this situation, he is looking at a maximum of
10 five years because he already received the benefit of a
11 conspiracy under 371, and we are asking, Your Honor,
12 that you impose a guideline range sentence. We are
13 asking for 60 months, forfeiture to be announced today
14 as a part of the record. I know Your Honor already
15 signed a consent order of forfeiture. Please, we are
16 asking that forfeiture be made part of the judgment and
17 commitment order as well. And we are not asking for
18 probation or supervised release under the circumstances
19 in this case.

20 THE COURT: Can I just ask your view on the
21 argument by Mr. Lopez that because he is now effectively
22 deportable, he has no legal status, that he will be
23 classified differently at the Bureau of Prisons, and do
24 you share that understanding as to what happens in this
25 situation?

1 MR. WERNICK: My limited understanding is --
2 and we don't oppose -- and we don't oppose the request
3 that he be sent to Allenwood; we would certainly defer
4 to Your Honor -- my limited understanding of this issue
5 is simply that there can be some bureaucratic red tape
6 paperwork. That happens if he is sent to other
7 facilities, but I certainly defer to the Bureau of
8 Prisons on that if that's Your Honor's question.

9 THE COURT: Well, the question is not about the
10 location. But they are arguing that perhaps his
11 sentence should be lower because -- and this is my
12 reading of it; he can correct me if I am wrong -- is
13 that, presumably, a defendant in a fraud -- non-violent
14 fraud case, who has no record, would go to a relatively
15 low level of security. And I am not sure exactly what
16 the names are, the classifications, but my guess is what
17 he is talking about is people in that situation often go
18 to what is affectionately known as club fed. or
19 something like that, and that he would be ineligible
20 because of his immigration status, and, therefore, he
21 would be disproportionately treated -- he would be
22 treated differently than others similarly situated
23 because of that factor, and that it should be taken into
24 account in terms of the actual sentence because he would
25 be at a higher level of security with less privileges

1 and/or more inconveniences because of the immigration
2 status, not because of the nature of the crime or who he
3 is as an individual.

4 MR. WERNICK: And I don't know that that is
5 always the case. I certainly know that that's not
6 always the case.

7 Where he ends up is a Bureau of Prisons decision,
8 often indicated based on location and just whether there
9 is space available at certain locations.

10 I don't want to weigh in. I think that is
11 generally speculation on their part to seek that as a
12 reason to depart downward.

13 I don't believe, under the circumstances of this
14 very troubling case, frankly, that this is a money
15 laundering case that has real indicia of -- of troubling
16 issues here that a lot of money laundering cases don't
17 have. The subject matter at issue here is highly
18 problematic, it's -- and it's something that the Court
19 should consider, and that should really utter against
20 that kind of mitigating discussion.

21 THE COURT: Thank you.

22 Mr. Lopez.

23 MR. LOPEZ: Yes, Your Honor. Thank you.

24 Sitting before Your Honor today is a 57-year-old
25 man from Russia. He lived his whole life there, worked

1 very hard pretty much at the same company since he was
2 25, and only came to the U.S. to live permanently -- not
3 permanently, on a detail, if you will, on assignment at
4 the closing chapter of his life. It was going to be --
5 kind of his last assignment was coming to the U.S.

6 This is a man who spent his whole life in Russia.
7 His whole life is in Russia currently. He has two grown
8 kids that are in Russia. He's got -- thankfully, his
9 parents are still alive, albeit very ill, as we have
10 submitted to the Court, and very elderly. One is 87,
11 about to be turning 88, his father, and his mother is
12 84. They both suffer from radiation-related illnesses
13 due to various radiation accidents that have happened in
14 Russia over the years, and are very infirm and can't
15 come to the United States.

16 He also has a brand new grandson that was three
17 before he was arrested, and now is four.

18 He has no criminal history. He is a dedicated --
19 in addition to being a family man, he's been dedicated
20 to his country and his work. He has a Bachelor's degree
21 from Moscow Aviation University, a Master's degree in
22 economics from the Academy of Foreign Trade.

23 He joined TENEX in 1990, when he was approximately
24 25, early 20s. He rose within the company, receiving
25 promotions and accolades, and he fostered cooperation

1 between the U.S. and Russia, and that's reflected in
2 some of the letters that the Court has received.

3 He played a key role in major agreements between
4 Russia and the United States in reducing its nuclear
5 arsenal. And he ultimately became president of TENAM in
6 2011 here in the U.S., as I said, his last chapter in
7 his professional career to move with his wife in 2011 to
8 come to Chevy Chase, Maryland.

9 The letters that the Court has received, in
10 addition to discussing my client as a man and a caring
11 and devoted family man, address a lot of the issues and
12 contradict a lot of the issues that the government has
13 just tried to say is the reason why he should be sent
14 away for a long time.

15 There is no evidence that he has corrupted the
16 nuclear industry on a whole. In fact, many of the
17 letters you received are from people that he has worked
18 with in the nuclear energy that describe him as above
19 board; that these actions are out of character. No one
20 is trying to back away from anything, but saying, this
21 is it out character here; that he is considerate; that
22 he is kind; that he is conscientious in making sure all
23 production needs are met; that they are of correct
24 quality; that he's handled complex and routine issues
25 appropriately and -- and -- and, you know, beyond that,

1 effectively.

2 You know, these are letters from people from big
3 companies, you know, General Electric, Florida Power &
4 Light.

5 There is no pay to play alleged in any of these
6 things. There was a lapse in judgment that people in
7 the U.S. wanted to be a part of so they could get their
8 contracts, so they thought. So, the government just
9 alleged that, you know, there is pay to play and he was
10 in charge of it.

11 Well, if you look at the Statement of Facts, of his
12 Statement of Facts, no doubt that Daren Condrey and
13 Boris Rubizhevsky and Rod Fisk paid money in the hopes
14 of receiving an improper business advantage. There is
15 no actual evidence that this man here gave that improper
16 business advantage. He doesn't admit to it.

17 Now, it is an FCPA crime in and of itself to do
18 exactly what they did, and they pled to that because
19 that was their crime.

20 What I am trying to say here is that if there is
21 corruption in the industry, they are still, despite the
22 role argument, putting the whole corruption on this
23 man's shoulders, and it doesn't belong on this man's
24 shoulders, it just doesn't, and the evidence doesn't
25 show that it does. In fact, to the contrary.

1 As I said, he had a -- no question, there is a
2 lapse in judgment here. He is a Russian national,
3 unfamiliar with U.S. laws and customs, and, you know,
4 has been in Russia his whole life.

5 Arrested October, 2014, and as of today, he's
6 already served over a year in jail. Today. Two
7 Thanksgivings in jail. Again, it's not his holiday from
8 his country, but, obviously, he grasps that
9 significance.

10 The message has been received for his actions, both
11 with respect to my client, Vadim, and the general
12 public. The goals of sentencing are served through what
13 has already happened and what we anticipate the Court
14 will give.

15 There is no question of whether he is going to
16 serve more time in jail. We get that. Everyone gets
17 that. The question is how much? How much is actually
18 necessary to achieve the goals of sentencing?

19 This has been publicly followed both in the United
20 States and in Russia, and if there is any doubt in
21 Russia as to what the U.S. laws are or the consequences
22 of breaking them, there is no doubt now. That
23 deterrence message has been received.

24 He is taking the full brunt of the forfeiture, as
25 we talked about, the two million, despite any evidence

1 that he received any in his pocket. The government
2 said, yeah, there is evidence in the record that he
3 received it. There is some statements by --
4 uninterpreted, without the assistance of an interpreter,
5 pre-arrest, when the agents surprise him and he thinks
6 he is going about his every day.

7 There is no bank record or anything that ties money
8 from any of these schemes to this defendant; yet, he's
9 taken the full brunt of the forfeiture. And as we
10 talked about earlier, Boris Rubizhevsky's plea agreement
11 talks about 26,000, and Condrey, it looks like he is
12 getting nothing. It doesn't say anything.

13 The immigration status that -- the effect of his
14 immigration status that Your Honor referred to earlier,
15 I think the government said that they are aware of cases
16 where immigration status isn't taken into effect. I am
17 not sure what those are.

18 The BOP statements are pretty clear. We have cited
19 them for the Court to look at. He is not going to be
20 eligible for education, vocational programs if he wanted
21 them. If he had a substance abuse problem, which he
22 doesn't, thankfully, he wouldn't have been eligible to
23 receive time off for that.

24 He is not able to go to the club fed. or wherever
25 Martha Stewart was making cranberry jam. He is not

1 going to be making cranberry jam. That's not happening
2 for him. He doesn't get any of these benefits.

3 Setting aside the severity of the crime is not the
4 same thing as -- or what you might think of the -- of
5 the specified unlawful activity to the money laundering.
6 It -- it's not the same thing as, you know, where is he
7 going to be sent by BOP and their rules of additional
8 punishment that's going to be netted upon him because he
9 won't be able to take advantage of the halfway houses or
10 furloughs or anything else that other people might be
11 eligible for. He is off the board not eligible for
12 those things.

13 On top of it, he is going to be isolated from
14 everybody, except for Mr. Jacobson and the Consulate.

15 His whole life is not here. It's all in Russia.
16 His parents can't come visit. They are physically
17 unable to make that trip. They were supposed to come
18 for an event here and they couldn't because of their
19 infirmity illness.

20 The amount of time that you ultimately sentence
21 this defendant has a direct impact on his possibility,
22 and I am purposefully pulling at your heartstrings here
23 and I am purposefully saying this is an extraordinary
24 circumstance, an extraordinary case for family
25 relationships because the amount of time you sentence

1 has a direct impact on the likelihood that he will ever
2 see his parents again.

3 He is very close with his parents. His father is
4 someone of notoriety in Russia. You know, he basically
5 followed in his father's footsteps in a lot of ways, and
6 his father is going to be 88 next week -- two weeks. As
7 I said, I mentioned that on purpose to pull at your
8 heartstrings because they should be pulled at. And not
9 to mention his kids and his grandson that -- that he is
10 missing.

11 I am going to tell you what we are asking for, and
12 it's in our papers. We are not asking for anything
13 extraordinary. We are not saying let him out tomorrow.
14 We are not saying let him out today, for that matter.

15 We are asking for a sentence that is in line with
16 what statistics show that other defendants that have
17 pled guilty to money laundering, 371 conspiracy in
18 particular, that does not receive the benefit of a 5K,
19 have received. And the analysis that we have put
20 forward for your consideration, put together by a
21 nonprofit organization, the National Center on
22 Institutions and Alternatives (sic), analyzed the
23 statistical data that's generated by this Court and
24 every other Court from 2005, post *Booker*, to 2014, and
25 came up with a total number of approximately 4400

1 defendants sentenced from memory.

2 And then they do a number for conspiracy, for 371
3 conspiracies. Then they do a number of filtering down.
4 How many were money laundering conspiracy? How many
5 money laundering with no 5K? Ultimately, you get to 68
6 defendants. And then it has the loss amounts there.
7 And the average for those 68 defendants over a ten-year
8 period, and I don't know their names, I don't know their
9 backgrounds, every case is different, and we all know
10 that and have been through that in the bond motion and
11 other hearings, is 14-and-a-half months.

12 If you look at the statistical analysis for a loss
13 of over 9 million, which, by the way, is not here,
14 right, we have 2 million, it's an average of 30 months.

15 THE COURT: Do your stats give any indication
16 where the sentences were relative to the guidelines?
17 Were they all downward variances, or were these cases in
18 which there was a general sentence that got them to that
19 general area?

20 MR. LOPEZ: I don't know the answer to that
21 question. I can get the answer to that question during
22 this hearing. But let me -- so I don't know the answer
23 to that question.

24 But to speak on the guidelines for a minute, the
25 guidelines is obviously something the government wants

1 you to focus on. It is but one factor of many, as this
2 Court knows. I don't have to tell this Court the
3 sentencing -- how to sentence. They are not
4 presumptively reasonable.

5 The Supreme Court, in three different cases, a line
6 of three cases, have established pretty clear
7 instruction, if you will, or parameters around what the
8 guidelines mean to a sentencing Court. To a sentencing
9 District Court, they are not presumptively reasonable.
10 They are a rough approximation of what the Sentencing
11 Commission thinks is reflected by the 3553(a) factors,
12 understanding that they have no ability to really
13 analyze the individual characteristics of a defendant,
14 which is what you have the ability to do.

15 The Supreme Court case of *U.S. v. Rita* goes a step
16 further, and, really, it's very interesting
17 academically, if nothing else, says, The Commission's
18 guidelines are organic. I mean, they are -- they are --
19 they were just revised. We had a correction to the
20 presentence investigation report. There was a fine
21 change from 2014 to 2015. They get changed. They get
22 changed based on what courts decide, what -- input from
23 prosecutors, input from defense counsel.

24 I have no idea if they seek the input from this
25 National Center on Institutions and Alternatives (sic)

1 or not, I don't know the answer, but there is a whole
2 body centered around evaluating and deciding what are
3 courts doing and where should it be?

4 And so that's not -- my point is, it's not
5 concrete. It's not like these guidelines, 57 to 60
6 months, that's it, that's what everyone has said is
7 correct, and that's the way you need to go. Not true.

8 You know, if anything, the statistical analysis
9 shows post *Booker* Courts aren't doing that. They are
10 about half of what these guidelines are. And who knows,
11 of 9 million, that loss table kicks up pretty quick, as
12 we all know, so it's a major -- whether it's a variance,
13 whether it's a departure, whether it's a deviation, it's
14 nowhere near there.

15 It's 50 to -- 15 to 30 months, and that's all we
16 are asking here, Your Honor. We are asking that our
17 client be put in the position of everyone else for the
18 past ten years. Obviously, there is, you know,
19 outliers, and you can take the statistics and I am sure
20 figure something else out, that it says something
21 different, but this is what we have.

22 And what we have is 15 to 30 months. And what we
23 have is a defendant who has already spent a year in
24 jail, with his family nowhere near here, who has
25 accepted responsibility for his crimes, and is before

1 the mercy of the Court hoping to see his parents again
2 before -- before they die.

3 The Supreme Court is clear that the sentencing
4 judge is in the best place to find the facts and
5 circumstances of -- to -- to decide what is the most
6 effective sentence that's not greater than necessary to
7 achieve those goals, and we submit, putting him where
8 everyone else seems to be, is the right way to go.

9 Now, the government talks a lot about, you know,
10 that he put people in a situation. He didn't put
11 anybody in any situation. They put themselves in that
12 situation.

13 So, again, another example of just piling on him
14 the -- the weight of the world in this case. It's not
15 -- it's not -- it's not true. And you will sentence
16 them, and you will look at their factors individually
17 and decide what's appropriate for them. But what's
18 appropriate for our client is a sentence in the range
19 that -- that we discussed.

20 I ask the Court to look through all the factors,
21 and I can go through each and every one of the 3553
22 factors to talk about the circumstances. I have already
23 blended them into my response of the offense.

24 His role, as the Court had found, at least on the
25 evidence that we have seen and we know about, and we

1 submit that the Court came to the correct finding, is no
2 greater than anybody else.

3 The need for sentencing to reflect the deterrence
4 and the recidivism, that's accomplished by what's
5 happened already.

6 Protect the public from other crimes, that's not an
7 issue here.

8 The range suggested by the advisory guidelines, not
9 presumptive. The ranges set forth in statistical
10 analysis are well below the guidelines for this. And if
11 you talk about 9 million, well below whatever that might
12 be.

13 And we ask the Court to do two main things here:
14 One, to look at the Vadim as I have described him; and
15 to also really take to heart this idea of unwarranted
16 sentencing disparities because that's, you know, that's
17 important. Why should this man, who the government has
18 been investigating, as it came out in the April hearing,
19 since 2007, arrested in 2014, hasn't seen his family
20 since, why should we be spending more and more resources
21 to hold him in longer than 15 to 30 months? And we, by
22 the way, recommend that you go on the low end of that
23 range. What are we serving? What purpose? What
24 message are we giving that isn't -- that hasn't been
25 given?

1 You know, they -- the government's memo talks about
2 the FCPA at great length. He didn't commit an FCPA
3 violation. Daren Condrey committed an FCPA violation.
4 You can take that into consideration in his sentence.

5 He committed a money laundering violation. He
6 tainted our financial system with promoting an offense,
7 and, as is specified, unlawful activity.

8 One last thing I want to address, and that is that
9 he's already received -- the government's contention
10 that he's already received a benefit because of this
11 five-year cap. I don't think the Court can read that --
12 take that to heart or read into that too much, and I
13 submit it's not really worth anything.

14 I have no idea what motivated the Court -- the
15 government. I am happy they did, but I have no idea
16 what motivated the government to give a five-year cap.
17 Perhaps their case wasn't as good as they thought it
18 would be, perhaps their witnesses didn't work out, but
19 to say that now he's gotten a benefit, look, we all know
20 what goes into those processes, and that was a deal that
21 was struck on both sides. That's not a benefit to be
22 taken into consideration here.

23 Your Honor, I ask that you let my client return
24 home, return to his family, and see his parents before
25 they pass, and put him at the mercy of this Court, to

1 take those 3553(a) factors into account, into heart,
2 making an individualized assessment, and just treat him
3 fairly, between 15 and 30 months that those other 68
4 defendants were treated.

5 Thank you, Your Honor.

6 THE COURT: Thank you.

7 Mr. Mikerin, under our system, if you would like to
8 address the Court, address me, on the issue of
9 sentencing, you have the opportunity to do that now.
10 You are not required to, but you do have that
11 opportunity and that right.

12 THE DEFENDANT: Your Honor, for 25 years, I
13 worked in the area with my firm belief that the business
14 relations between the Russian and American companies
15 would promote better relationships between the Russia --
16 Russian and American people.

17 All these years, I like this country, I like the
18 traditions, and I have respected the traditions, and I
19 like the people of the country.

20 Regrettably, after 25 years of this work, I am
21 standing here in an American courtroom, and I am very
22 regretful about it.

23 Now I want just one thing: As soon as possible, to
24 come back home to my parents, my old parents, my
25 grandson, my children, return home. I also hope that my

1 -- the people that are close to me and my relatives
2 would be able to live through this.

3 Thank you.

4 THE COURT: Okay. I'd like to take a brief
5 recess to consider everything I have heard, and I will
6 be back in about ten minutes.

7 (Recess taken from 11:42 a.m. until 11:56 a.m.)

8 (It is the policy of this court that every
9 guilty plea and sentencing proceeding include a bench
10 conference concerning whether the defendant is or is not
11 cooperating.)

12 THE COURT: Please be seated. Thank you for
13 waiting.

14 So, I am prepared to issue a sentence on this case
15 today. In considering the appropriate sentence for
16 Mr. Mikerin, I have considered the advisory guideline
17 range, which is 57 to 60 months. I have also considered
18 all of the factors in 18, United States Code, Section
19 3553(a), including, the nature and circumstances of the
20 offense; the history and characteristics of the
21 defendant; the need to meet the purposes of sentencing
22 and the need to avoid unwarranted sentencing disparities
23 among similarly-situated defendants. I have also
24 considered Congress's direction that the sentence
25 imposed be sufficient, but not greater than necessary,

1 to comply with the purposes of sentencing.

2 And I will discuss some of the -- some, but not all
3 of those factors, although I have considered all of the
4 factors, and I will discuss them, to some degree, in
5 light of the defense's request for a variance and to
6 what extent different factors may or may not affect that
7 analysis.

8 First, on the nature of the crime, this was a
9 fairly elaborate scheme of money laundering involving
10 offshore bank accounts and multiple companies.

11 What makes it stand out to me, which the government
12 echoed in their discussions today, is that the product
13 involved in these transactions was nuclear material that
14 needed to be transported safely, and so this is not just
15 an academic exercise. It is serious business. If not
16 handled properly, the safety of Americans and others
17 could be at substantial risk.

18 And although there is no indication that there was
19 any such risk, one of the reasons that we have laws
20 against corruption is to ensure that all decisions are
21 made free of those types of influences, and that, for
22 example, when one is looking to find contractors to be
23 involved in the transportation of nuclear material or
24 other dangerous materials, we would like to think that
25 the decisions are made clearly on the merits of the

1 economics and also the considerations of -- of safety
2 and protecting the community.

3 So, an activity or a scheme in which the defendant
4 and coconspirators would allow the process of selecting
5 companies to carry out this highly sensitive activity to
6 be corrupted by graft and bribery is very troubling, and
7 does indicate that, relative to other crimes, this is
8 perhaps more serious in terms of the types of money
9 laundering we have at issue.

10 As for the history and characteristics of the
11 defendant, it's undisputed that Mr. Mikerin had no prior
12 convictions. He generally has lived a law-abiding life,
13 at least with respect to his time in the United States.

14 Although his time in the United States was limited,
15 he has developed good professional and personal
16 relationships with Americans, as reflected by the
17 various letters of support that I have received and
18 read.

19 At the same time, I did not find, in the materials
20 submitted, any circumstances that would justify this
21 crime. As a business executive, he did not have a
22 compelling financial need.

23 The government has indicated or intimated that
24 there may be some other motive other than financial
25 gain. I am not going to go down the road of speculating

1 of whether there is some sort of other motivation that
2 relates to his being from a -- a Russian national from a
3 Russian company. I don't think that's appropriate. I
4 don't think there is any evidence to support that.

5 So, the best conclusion I can come to is that this
6 is a crime motivated by greed both by Mr. Mikerin, on
7 his part, and the economic motivations of his
8 coconspirators. And, as indicated, there is no -- has
9 been no indication that there is any other more
10 justifiable basis for the activity.

11 Now, one issue with respect to Mr. Mikerin's
12 characteristics that has been raised is the health of
13 his parents. It is troubling and unfortunate, as a
14 reality, that this situation arises. It is not unusual
15 in this Court to have requests for leniency based on
16 either the health of elderly parents, particularly if
17 there is a lengthy sentence at issue. In fact, I have
18 also had cases in which -- one case in which a defendant
19 sentenced was likely to cause him to outlive the life
20 expectancy of his child who had a disability.

21 And, so, these are very difficult issues to
22 address, and as an individual, as a person, of course,
23 anyone in a decision-making position on this would be
24 loathe to separate families from their relatives under
25 these circumstances, but the track record we have

1 developed, and I think the system we have here, is such
2 that in these many other cases with elderly parents, and
3 including the one with the disabled child, there may be
4 some small consideration given, but it is by no means a
5 basis that has been used, at least in my Court, to grant
6 any significant variance, and I cannot make exceptions
7 for one case when we have not in other cases.

8 Unfortunately, the nature of these offenses are
9 such that if exceptions were made for these types of
10 situations in every case, as they should be if we are
11 going to do it in any case, it would lead to results
12 that really aren't appropriate given the criminal
13 justice system. It is the kind of thing that someone
14 who commits a crime should probably factor in before
15 they engage in that activity.

16 So, although I am very sympathetic to the issue, I
17 don't see it as a basis for a significant change in a
18 defendant's sentence.

19 On other -- some of the purposes of sentencing in
20 the guidelines, I don't have a concern about specific
21 deterrence, that is, whether Mr. Mikerin will re-offend.
22 The expectation is he will return back to Russia, and
23 that, from this example, he is not likely to re-offend.

24 But there is a significant need for a general
25 deterrence. White collar crime by companies and

1 executives are difficult cases to build, especially when
2 the evidence is overseas, as some of the evidence in
3 this case is. These cases are usually met by stiff
4 resistance that require, because the defendants have
5 significant resources, that too often, in my view, are
6 punished leniently because executives are not viewed as
7 traditional criminals.

8 Given these factors, it's unclear whether potential
9 defendants of this type of offense would be adequately
10 deterred if the sentence were not significant.

11 That concern I think is even greater for this
12 specific crime relating to bribery of foreign officials
13 not only because of legitimate businesses are
14 disadvantaged by these types of kickbacks, but because
15 these kinds of crimes are an affront to American values
16 of free and open economic competition and fundamental
17 fairness in all of our processes.

18 So, general deterrence is an important factor in a
19 crime such as this and weighs against leniency.

20 For the same reason, the need for the sentence to
21 reflect the seriousness of the crime and to promote
22 respect for the law also do not support leniency.

23 One of the most significant factors raised by the
24 defense is the importance of addressing potential
25 sentencing disparities with other defendants.

1 I agree this is an important factor to consider,
2 but I disagree with the conclusion that the defense has
3 raised. The data the defense has provided doesn't
4 provide enough detail or enough of the sample facts to
5 draw meaningful conclusions about how to sentence in a
6 case like this. But, if anything, I believe what it
7 shows is there is a significant amount of leniency
8 generally given for white collar crime cases, and I
9 think the data, if anything, simply highlights that
10 problem rather than provides a guidance on how to
11 sentence in this particular case.

12 In my experience, we have a significant divide
13 between non-violent street type fraud cases involving
14 lower level schemes involving credit cards, checks, and
15 other monetary instruments perpetrated by individuals of
16 limited education and standing in society on the one
17 hand, and then corporate fraud perpetrated by high-level
18 executives on the other. Both can lead to very high
19 guideline range sentences.

20 I, and I believe other judges in this district,
21 have correctly given significant sentences even to
22 first-time offenders in some of these lower level fraud
23 cases, and I think to depart from that approach here
24 because of the professional status, class, and resources
25 of the defendant would create an unacceptable sentencing

1 disparity among what I consider to be similarly-situated
2 defendants.

3 So I believe that this factor also does not weigh
4 in favor of leniency.

5 I will say, though, that I am prepared to give a
6 limited variance downward for one of the reasons raised
7 by the defense, but also with an additional factor which
8 I don't think the parties have raised.

9 It is true that as a deportable alien, Mr. Mikerin
10 will serve time -- or it is likely true that he will
11 serve time at a higher classification than an American
12 convicted of the same offense would. The -- even in the
13 low level -- low security facilities that someone who is
14 a deportable alien would likely go to is at a higher
15 classification than many other financial fraud
16 defendants would go to in the absence of their status as
17 a deportable alien. They also would be likely to be
18 eligible a -- let's say a white collar defendant who has
19 been convicted for a halfway house towards the end of
20 their sentence, which would not be available in the case
21 of Mr. Mikerin.

22 And an additional factor which I think is related
23 to that, which was probably implicit in the defense's
24 arguments, is that it's clear to me that Mr. Mikerin's
25 personal background is such that had he been an

1 American, or an even legal, permanent resident when this
2 offense occurred, there is no way he would have been
3 detained pretrial.

4 The only basis for that was the risk of flight, and
5 the risk that if he returned to Russia, he would not be
6 able to be brought back for prosecution. And so,
7 although the time counts the same, whether he does it
8 pretrial or post-trial, the conditions of confinement
9 for pretrial detainees in this district, or anywhere in
10 the country, are more generic towards any offender.
11 And, in fact, because of the nature of the crime as we
12 have, it's a much more significant form of incarceration
13 I believe than what he would have served post sentence
14 or what an American executive charged with the same
15 crime would serve post sentence even if the number of
16 months is the same.

17 I do think it's important to make sure that
18 Mr. Mikerin and anyone else in this situation, wherever
19 they come from in the world or whatever their status, is
20 treated fairly and equally under our principle of equal
21 justice under law.

22 So, I do believe that it is appropriate to give a
23 limited variance because of those conditions that he has
24 endured because of his immigration status, which, by no
25 means, in his case in particular, having entered legally

1 on a business Visa, don't really provide a basis to
2 treat him differently.

3 If he had entered illegally, perhaps you can make
4 an argument of that type, but he entered legally, he was
5 here legally, and because of that circumstance of his
6 status as a foreign national with ties to another
7 country, he went through a set of conditions that others
8 would not have to go through.

9 So, I will give a limited variance on that point.
10 But, again, it will be limited in part because of all
11 the other factors I raised which indicate that because,
12 as a matter of general deterrence, as a matter of the
13 significance of this type of crime, and avoiding
14 sentencing disparities with other criminals or -- or
15 convicted defendants, it will be limited.

16 So, I am now prepared to impose the sentence, so
17 I'd ask Mr. Mikerin if you could please stand.

18 In the case of the *United States vs. Mikerin*, the
19 Court sentences the defendant as follows:

20 On Count One, conspiracy to commit money
21 laundering, the Court sentences you to a term of
22 imprisonment of 48 months.

23 I will recommend to the Bureau of Prisons that the
24 defendant be designated to FCI Allenwood if he is
25 eligible for that facility.

1 Pursuant to Sentencing Guideline 5D1.1(c), I will
2 not impose a term of supervised release because the
3 defendant will likely be deported following the
4 sentence. I will impose no fine. And you are required
5 to pay a special assessment of \$100.

6 The judgment will also include the forfeiture order
7 consisting of a money judgment of \$2,126,622.36, to
8 which the \$127,843.72 seized from the defendant's bank
9 account will be credited.

10 I will note, for the record, that I would have
11 imposed the same sentence whether I gave the four-level
12 increase for the leader/organizer adjustment or not.

13 Mr. Mikerin, I just wanted to note for you
14 something. Because of the situation we are in, as I
15 indicated, you being a Russian national from another
16 country, I have explained the reasons I imposed this
17 particular sentence.

18 Because it is a serious offense and there is a
19 compelling need to make clear that executives and others
20 in similar positions are not engaged in corruption of
21 this type under our laws and our values here in America,
22 but I want to assure you, as I think I hopefully have
23 from my description of the reasons for a lower sentence
24 than the guideline range, I want to state publicly that
25 the sentence is no higher than I would have imposed had

1 you been an American, and, for the reasons I stated, it
2 is lower in one sense.

3 Under the American Justice System, we live by the
4 principle of equal justice under law. That applies to
5 foreign nationals from anywhere in the world, and we
6 should recall that the activities in this case came
7 about during the implementation of an agreement related
8 to nuclear material that represented a spirit of
9 cooperation between the United States and Russia.

10 As President Kennedy once said about our two
11 peoples: Our most basic common link is that we all
12 inhabit this small planet, we all breathe the same air,
13 we all cherish our children's futures, and we are all
14 mortal.

15 So, you have my assurance that you have been
16 treated the same way that an American would have been
17 treated in this courtroom under the same circumstances,
18 with the exception of a small amount of reduction in
19 your sentence because of the circumstances I raised.

20 I just wanted to make sure that you heard that and
21 you understood that's how I have looked at this case.

22 Thank you very much. You may be seated.

23 Mr. Mikerin, you generally have the right to appeal
24 your conviction and sentence subject to the way which
25 you made in your plea agreement.

1 If there is a basis to appeal and you wish to do
2 so, you must file a notice of appeal within 14 days of
3 the entry of the judgment. If you request, the clerk
4 will prepare and file a notice of appeal on your behalf.
5 If you cannot afford to pay the cost of an appeal or for
6 appellate counsel, you can apply to have the court waive
7 the filing fee and appoint counsel to represent you on
8 the appeal.

9 Is the government now prepared to dismiss the
10 original indictment?

11 MR. WERNICK: Yes, Your Honor. The government
12 will now dismiss the indictment at Docket No. 11.

13 THE COURT: Is there anything else I need to
14 address today?

15 MR. LOPEZ: Your Honor, one thing. If you
16 could please include in your order, along with your
17 recommendation for Allenwood, a notation that the
18 government does not oppose such request, it might short
19 circuit some questions that the BOP has. They do view
20 the government's opinion on these matters sometimes.

21 THE COURT: Okay.

22 MR. LOPEZ: So it would be helpful from our
23 perspective.

24 THE COURT: I will do that. Any objection to
25 that, Mr. Wernick?

1 MR. WERNICK: No, Your Honor.

2 THE COURT: Thank you very much. Have a good
3 afternoon.

4 (The proceedings were concluded at 12:11 p.m.)
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C E R T I F I C A T E

I, Renee A. Ewing, an Official Court Reporter for the United States District Court for the District of Maryland, do hereby certify that the foregoing is a true and correct transcript of the stenographically reported proceedings taken on the date and time previously stated in the above matter; that the testimony of witnesses and statements of the parties were correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription to the best of my ability; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

Renee A. Ewing

Renee A. Ewing, RPR, RMR, CRR
Official Court Reporter
December 30, 2015

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